IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28383 of 2007(D)

AGAINST THE ORDER IN IA.7954/06 IN
OS.658/2001 of III ADDL.SUB COURT, ERNAKULAM
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PETITIONERS:
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1. RAJMOHINI, W/O VASUDEVAN PILLAI,
PANTHALATH BUNGLOW, KURUMPALAM,
THONNALLUR, PANDALAM.

2. VASUDEVAN PILLAI, S/O KRISHNA PILLAI,
SALEELA BUILDINGS, VYTTILA,
KOCHI-19.

BY ADV. SRI.P.J.JOSEPH PANIKKASSERY
SRI.P.J.THOMAS

RESPONDENTS:
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1. TONY MATHEW, S/O MATHEW,
EDAYAZHATH HOUSE, KUMBALANGI SOUTH,
KOCHI TALUK.

2. ARAVINDAKSHA MENON,
S/O SANKARA MENON, SAURABHI APPARTMENT,
VYTTILA, POONITHURA VILLAGE, KOCHI.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28383 OF 2007

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Dated this the 25th day of September, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order passed by the Sub Judge, Ernakulam in I.A.7954/06 in O.S.685/01. The above petition had been filed to send a document for expert opinion. It is the case of the writ petitioner that the respondent had executed a document agreeing to reconvey the property and it contains his signature and therefore in order to prove the same it has to be sent for an expert opinion. This has been challenged by the other side.

2. The Court below found that this is only an after thought and there is no such mention of the document and therefore it is beyond the pleadings in the case and therefore disallowed the application. I am in total agreement with the finding of the Court below. In paragraph 5 of the plaint it is averred that there has been an agreement to reconvey. In paragraph 11 it is qualified as an oral agreement. Therefore,

a cumulative reading of paragraphs 5 and 11 of the plaint would evidently establish that what the plaintiff relied upon is an oral agreement and nothing else. It is also to be stated that if there has been a document in writing executed by the respondent it should have been the first document to be referred to and pleaded in the plaint for the purpose of proving the case. Therefore, the belated attempt of producing such a document and request the Court to send it for comparison cannot be entertained because it is beyond the scope of pleadings in this case. Again and again this Court as well as the Apex Court has taken the view that the parties should be confined to let evidence only on the basis of the pleadings in the case and not otherwise. Therefore, I do not find any illegality or irregularity committed by the Court below in refusing to send the document for expert opinion. Hence, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

ul/-